

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6553**

**BILL NUMBER:** HB 1714

**NOTE PREPARED:** Jan 24, 2005

**BILL AMENDED:**

**SUBJECT:** Computer Spyware.

**FIRST AUTHOR:** Rep. Moses

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State

**Summary of Legislation:** This bill prohibits the unauthorized installation of a computer spyware program that monitors a computer's usage and: (1) transmits usage information to another computer; or (2) displays certain advertisements in response to the computer's usage. It also permits the installation of spyware only if the computer owner consents after full disclosure of: (1) the spyware's purpose; and (2) a method of uninstalling the spyware.

This bill authorizes a web site owner, a trademark or copyright holder, or an authorized Internet advertiser harmed by spyware to bring a civil action against the person who unlawfully installed the spyware. It permits a person who brings a cause of action for unlawful spyware installation to receive injunctive relief and the greater of actual damages or \$10,000 per violation. This bill permits a court to award treble damages if the violation is knowing or intentional, and permits the award of attorney's fees and costs.

This bill also requires the Consumer Protection Division of the Attorney General's Office to receive reports of unauthorized spyware installation.

**Effective Date:** July 1, 2005.

**Explanation of State Expenditures:** This bill will result in an indeterminable administrative costs to the Attorney General's Office (AG). The cost incurred by the AG will be dependent upon the volume of complaints.

The bill requires the AG to establish procedures by which a person may report the unauthorized installation

of spyware. The bill specifically requires that the AG establish a web site and a toll-free number to receive these complaints. This bill charges the Consumer Protection Division of the AG's Office with gathering information concerning these violations. The bill provides that the AG shall make a recommendation to the Legislative Council if the AG believes that these provisions require amendment.

**Explanation of State Revenues:** This bill authorizes a web site owner, a trademark or copyright holder, or an authorized Internet advertiser harmed by spyware to bring a civil action against the person who unlawfully installed the spyware. It permits a person who brings a cause of action for unlawful spyware installation to receive injunctive relief and the greater of actual damages or \$10,000 per violation. This bill permits a court to award treble damages if the violation is knowing or intentional, and permits the award of attorney's fees and costs. By creating a specific civil action for harms brought about by spyware, it is estimated that this bill will increase the number of actions filed.

*Court Fee Revenue:* If additional civil actions occur, revenue to the state General Fund may increase if court fees are collected. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court.

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:** *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund.

**State Agencies Affected:** Attorney General's Office.

**Local Agencies Affected:**, Trial courts, city and town courts.

**Information Sources:** Jason Thompson, Attorney General's Office, 317-233-2413.

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